

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	File No. EB-02-NY-192
)	
New Eastern Car & Limo Service)	NAL/Acct. No. 200332380004
WPAK215, Brooklyn, New York)	
)	FRN: 0004-0271-08

FORFEITURE ORDER

Adopted: May 3, 2004

Released: May 5, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to New Eastern Car & Limo Service (“New Eastern”), licensee of station WPAK215, Brooklyn, New York, for willful and repeated violation of Section 90.403(a)(2) of the Commission’s Rules (“Rules”).¹ The noted violation involves New Eastern’s operating radio transmitting equipment on an unauthorized frequency.

2. On November 6, 2002, the Commission’s New York, New York District Office (“New York Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to New Eastern for a forfeiture in the amount of four thousand dollars (\$4,000).² New Eastern filed a response to the *NAL* on December 3, 2002.

II. BACKGROUND

3. On August 20 and 21, 2002, while assessing compliance in the Private Land Mobile Service with a mobile direction finding vehicle, Commission agents from the New York Office monitored the frequency 31.90 MHz in Brooklyn, New York. The agents determined that New Eastern, located at 100 – 102 Bushwick Ave., New York, New York 11206, was operating its base station on the frequency 31.90 MHz. The agents found no evidence of a Commission authorization issued to New Eastern to operate on 31.90 MHz. On August 21, 2002, the agents advised the manager of New Eastern that its base station was operating on an unauthorized frequency of 31.90 MHz and that New Eastern’s station license to operate on 31.92 MHz had expired on August 20, 2002.

4. On August 22, 2002, the New York Office sent a Warning Letter to New Eastern for operation on an unauthorized frequency of 31.90 MHz. New Eastern responded on August 23, 2002, stating that their equipment was corrected for the frequency 31.92 MHz on August 21, 2002, the same day that the New York Office agents spoke to New Eastern’s manager.

¹ 47 C.F.R. § 90.403(a)(2).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332380004 (Enf. Bur., New York Office, released November 6, 2002).

5. On November 6, 2002, the District Director of the New York Office issued a *NAL* to New Eastern for apparent willful and repeated violation of Section 90.403(a)(2) of the Rules by operating radio transmitting equipment on an unauthorized frequency of 31.90 MHz. In its response on December 3, 2002, New Eastern admitted it operated on 31.90 MHz on the day it was inspected by the New York Office agents. New Eastern requested that if the Commission did not cancel the forfeiture, to consider reducing it. New Eastern provided profit and loss statements for 1999, 2000, and 2001.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining New Eastern’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁵

7. Section 90.403(a)(2) of the Rules requires licensees of radio stations in the private land mobile radio services to “exercise such direction and control as is necessary to assure that all authorized facilities are employed only in a permissible manner.” The New York Office investigation established that New Eastern operated a transmitter located at 100 – 102 Bushwick Ave., New York, on an unauthorized frequency (31.90 MHz) and, therefore, failed to exercise the direction and control necessary to assure that its facilities were employed only in a permissible manner by operation on its licensed frequency of 31.92 MHz. Based on the facts before us, we find that New Eastern willfully⁶ and repeatedly⁷ violated Section 90.403(a)(2) of the Rules.

8. We have reviewed the financial information provided by New Eastern and we find that this information provides a basis for reduction of the forfeiture to one thousand five hundred (\$1,500) dollars on the basis of inability to pay.⁸

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ New Eastern operated on an unauthorized frequency on August 20 and August 21, 2002. As provided by 47 U.S.C. § 312(f)(2), “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co.*, *supra*.

⁸ The Commission has determined that, in general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture. *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com.

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9. We have examined New Eastern's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that New Eastern willfully and repeatedly violated Section 90.403(a)(2) of the Rules and we find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount is appropriate as indicated above.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ New Eastern Car & Limo Service **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for its violation of Section 90.403(a)(2) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332380004 and FRN 0004-0271-08. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. Julio Toala, New Eastern Car & Limo Service, 100-102 Bushwick Ave., Brooklyn, NY 11206.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.